

### REMARKS

In the Office Action dated February 23, 2007, the Examiner indicates that claims 1, 4-16, and 41-53 are allowed. The allowance of these claims is appreciated. Claims 1, 4-17, 19-21, 23, and 41-53 are pending and claims 17, 19-21, and 23 were rejected.

Claims 21 and 23 have been rejected on the grounds of nonstatutory double patenting over claims 1, 4, 71, 79, and 80 of U.S. Patent No. 7,072,720 (the '720 patent). Claims 17, 19-21, and 23 are rejected under 35 USC 102(b) as anticipated by U.S. Patent No. 4,969,468 to Byers et al. ("Byers").

#### **Double Patenting**

The '720 patent is a Continuation of the present application. Accordingly any patent that issues from the present application will have the same effective filing date as the '720 patent.

The present claim 21 describes a cuff device for connecting an electrode with a nerve. The device includes an electrode that conforms to a portion of a nerve. The electrode is positioned in a longitudinal channel of an electrically nonconducting member. This device is illustrated by Figures 7A- 7D.

Claim 1 of the '720 patent is directed to a device specifically for stimulating a vagus nerve. It is designed to be inserted into a trachea, esophagus or internal jugular vein of a patient. This device is designed for indirect stimulation of the vagus nerve. In such locations the vagus nerve is not particularly exposed. The cuff device of the present application claim 21 is designed particularly for placement on a surgically exposed vagus nerve (See col. 8, lines 41-57). These devices are designed for direct stimulation of the vagus nerve. In such direct stimulation it is more important to reduce mechanical damage to the nerve and accordingly, an element of the device claimed in claims 21 and 23 is that the electrode conforms to the nerve. This is not an element of the '720 patent claims 1, 4, 71, 79, or 80.

Since the present claims 21 and 23 are patentably distinct from the claims of the '720 patent, the double patenting rejection should be withdrawn.

**Anticipation by Byers**

Byers teaches an electrode array for making multiple electrical contacts with biological tissue. The multiple electrical contacts are made with multiple protuberances. See, for example, column 5, lines 60-68. Two base plates having multiple electrodes thereon can be sandwiched on a nerve. See Fig. 8 and col. 7, lines 3-17. Applicant disagrees that Fig. 15 shows a confronting rigid jaw embodiment.

Claim 17 is directed to a clip electrode having pivoting rigid jaws holding at least one electrode. The electrode is shaped to avoid damage to the nerve. Specifically the electrode “includes a concave portion that receives the nerve and at least one flat portion.” Byers does not teach a concave shaped electrode- just the sharp protuberances. See all of the Figures and col. 5, lines 66-68. Moreover, the Examiner did not demonstrate that Byers teaches confronting rigid jaws in a pivotal relationship.

Claim 19 further states that the electrode is compressible. Byers does not teach that the protuberances/ electrodes are compressible so as to avoid crush trauma.

Claim 20 states that the electrode is wire mesh or wire wool. Byers shows an array of the protuberances/ electrodes but does not state that they are wire mesh or wire wool.

Claim 21 describes a different type of device than claim 17. Claim 21 describes a cuff device for connecting an electrode with a nerve. The device includes an electrode that conforms to a portion of a nerve. The electrode is positioned in a longitudinal channel of an electrically nonconducting member. This device is described in Figures 7A- 7D.

Byers does not teach an electrode that conforms to a portion of a nerve. Byers does not teach a device having an electrode wherein the electrode is positioned in a longitudinal traversing channel of an electrically nonconducting member.

Claim 23 states that the electrode is wire mesh or wire wool. Byers shows an array of the protuberances/ electrodes but does not state that they are wire mesh or wire wool.

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**Conclusion**

Since the cited reference does not teach each element of the claims it does not anticipate the claims and the rejection should be withdrawn. The issuance of a notice of allowance is respectfully requested.

Respectfully submitted,



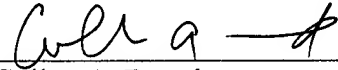
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